

section, the Executive Director is empowered to appoint a special counsel for such proceedings.

1. Unless specified otherwise in this Code, any penalty assessed or proposed in an order shall not exceed Ten Thousand Dollars (\$10,000.00) per day of noncompliance.

2. The determination of the amount of an administrative penalty shall include, but not be limited to, the consideration of such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the respondent from the violation, the history of such violations and respondent's degree of culpability and good faith compliance efforts. For purposes of this section, each day or part of a day upon which such violation occurs shall constitute a separate violation.

3. Notwithstanding the provisions of subsections A and B of this section, the Department may, within three (3) years of discovery, apply for the assessment of an administrative penalty for any violation of this Code, or rules promulgated thereunder or permits or licenses issued pursuant thereto.

M. Any order issued pursuant to this section may require that corrective action be taken. If corrective action must be taken on adjoining property, the owner of such adjoining property shall not give up any right to recover damages from the responsible party by following corrective action to occur.

Added by Laws 1993, c. 145, § 26, eff. July 1, 1993.  
Section 2-1-101 et seq. of this title.  
Title 75, § 250 et seq.

§ 2-3-503. Notice of complaint—Opportunity to provide written information pertinent to complaint

If the Department undertakes an enforcement action as a result of a complaint, the Department shall notify the complainant of the enforcement action by mail and offer the complainant an opportunity to provide written information pertinent to the complaint within fourteen (14) calendar days after the date of the mailing.

Added by Laws 1993, c. 145, § 27, eff. July 1, 1993.  
Section 2-1-101 et seq. of this title.

§ 2-3-504. Violations of Code, orders, permits or licenses or rules—Remedies and penalties

A. Except as otherwise specifically provided by law, any person who violates any of the provisions of this Code, or who fails to perform any duty imposed by this Code, or who violates any order, permit or license issued by the Department or rule promulgated by the Department pursuant to this Code:

1. Shall be guilty of a misdemeanor and upon conviction thereof may be punished by a fine of not more than Two Hundred Dollars (\$200.00) for each violation and not more than Ten Thousand Dollars (\$10,000.00) for each violation or by imprisonment in the county jail for not more than six (6) months or by both such fine and imprisonment;

2. May be punished in civil proceedings in district court by assessment of a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each violation;

3. May be assessed an administrative penalty pursuant to Section 26 of this act not to exceed Ten Thousand Dollars (\$10,000.00) per day of noncompliance; or

4. May be subject to injunctive relief granted by a district court. A district court may grant injunctive relief to prevent a violation of, or to compel a compliance with, any of the provisions of this Code or any rule promulgated thereunder or order, license or permit issued pursuant to this Code.

B. Nothing in this part shall preclude the Department from seeking penalties in District Court in the maximum amount allowed by law. The assessment of penalties in an administrative enforcement proceeding shall not prevent the subsequent assessment by a court of the maximum civil or criminal penalties for violations of this Code.

C. Any person assessed an administrative or civil penalty shall be required to pay, in addition to such penalty amount and interest thereon, attorneys fees and costs associated with the collection of such penalties.

D. For purposes of this section, each day or part of a day upon which such violation occurs shall constitute a separate violation.

E. The Attorney General or the district attorney of the appropriate district court of Oklahoma may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of this Code or any rule promulgated thereunder, or order, license or permit issued pursuant thereto.

F. 1. Any action for injunctive relief to redress or restrain a violation by any person of this Code or for any rule promulgated thereunder, or order, license, or permit issued pursuant thereto or recovery of any administrative or civil penalty assessed pursuant to this Code may be brought by:

- a. the district attorney of the appropriate district court of the State of Oklahoma;
- b. the Attorney General on behalf of the State of Oklahoma; or
- c. the Department on behalf of the State of Oklahoma.

2. The court shall have jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

3. It shall be the duty of the Attorney General and district attorney if requested by the Executive Director to bring such actions.

G. Except as otherwise provided by law, administrative and civil penalties shall be paid into the Department of Environmental Quality Revolving Fund.

H. In determining the amount of a civil penalty the court shall consider such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the defendant, the defendant's degree of culpability, and such other matters as justice may require.

1. In addition to or in lieu of any administrative enforcement proceedings available to the Department, the Department may take or request civil action or request criminal prosecution, or both, as provided by law for any violation of this Code, rules promulgated thereunder, or orders issued, or conditions of permits, licenses, certificates or other authorizations prescribed pursuant thereto.

Added by Laws 1993, c. 145, § 29, eff. July 1, 1993.  
Section 2-1-101 et seq. of this title.

§ 2-3-505. Fraud or misrepresentation—Additional penalties

In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation or certification in, or omits material data from, any application for a permit, license, certificate or other authorization, or any notice, analyses or report required by this Code, rules promulgated thereunder or any permit, license, certificate or other authorization issued pursuant thereto, or knowingly misrepresents or omits material data in such report to any person relying on such report or who alters any sample or knowingly renders inaccurate any monitoring device or method required to be maintained by such Code, rules, permits, licenses, certificates or authorization, or with regard to owners and employees of laboratories certified by the Department, misrepresents or omits material data from any report or analyses submitted to any person relying on such data because of the laboratory's certification shall, upon conviction, be guilty of a misdemeanor and may be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) for each such violation.

Added by Laws 1993, c. 145, § 29, eff. July 1, 1993.  
Section 2-1-101 et seq. of this title.

§ 2-3-506. Violations, remedies and penalties cumulative

A. It is the purpose of this Code<sup>1</sup> to provide additional and cumulative remedies to prevent, abate and control pollution. Nothing contained in this Code shall be construed to abridge or alter rights of action or remedies under the common law or statutory law, criminal or civil; nor shall any provision of this Code, or any act done by virtue thereof, be construed as estopping the state, or any municipality or person in the exercise of their rights under the common law to suppress nuisances or to abate pollution. Nothing in this Code shall in any way impair or affect a person's right to recover damages for pollution.

B. Nothing in this Code shall be construed to preclude the disposition of any matter by stipulation, agreed settlement, consent order or default.

C. Unless otherwise specified, the violations, remedies and penalties contained in this Code are in addition to those in the Environmental Crimes Act<sup>2</sup> and other Oklahoma law. The specific enforcement provisions of other articles of this Code shall control over the provisions of this part<sup>3</sup> when inconsistent.

D. The provisions of this part shall extend to all programs administered by the Department regardless of whether the statutes creating such program are codified in Title 27A of the Oklahoma Statutes.

Added by Laws 1993, c. 145, § 30, eff. July 1, 1993.  
Section 2-1-101 et seq. of this title.  
Title 27, § 1200.1 et seq.  
Section 2-3-601 et seq. of this title.

## ARTICLE IV. LABORATORY SERVICES AND CERTIFICATION

### PART I. DEFINITIONS

§ 2-4-101. Definitions

As used in this article:<sup>1</sup>

1. "Department" means the Department of Environmental Quality;

2. "Laboratory" means a facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, or soil or subsoil materials or performs any other analyses related to environmental quality evaluations;
3. "Parameter" means the characteristics of a laboratory sample determined by an analytic laboratory testing procedure;

4. "Program" means the State Environmental Laboratory Certification Program;
5. "Certificate" means that document issued by the Department showing those parameters for which a laboratory has received certification;

6. "Performance evaluation sample" means a sample submitted to a laboratory by the Department or other designated agent for the purpose of assessing the ability of the laboratory to correctly analyze samples using the approved method;

7. "Acceptable results" means a result within limits determined on the basis of statistical procedures as prescribed by the Department; and
8. "Evaluation" means a review of the quality control and quality assurance procedures, recordkeeping, reporting procedures, methodology, personal qualifications, equipment facilities and analytical techniques of a laboratory for measuring or establishing specific parameters.

Added by Laws 1993, c. 145, § 31, eff. July 1, 1993.  
Section 2-4-101 et seq. of this title.